

**STATE OF INDIANA – COUNTY OF RUSH
IN THE CIRCUIT AND SUPERIOR COURT**

**Notice of Amendments to Local Court Rules
May 18, 2011**

In accordance with Trial Rule 81 of the Indiana Court Rules, the judges of the Rush Circuit and Superior Court hereby give notice to the bar and the public that the Courts propose to amend their current local court rules. All new text is shown by underlining and deleted text is shown by ~~striketrough~~.

The time period for the bar and the public to comment will begin on **June 1, 2011**, and will close on **July 1, 2011**. The proposed amendments to the rule will be adopted, modified or rejected before July 31, 2011. These rule amendments do not require Supreme Court, and the effective date of the proposed amended rules shall be **January 1, 2012**.

Comments by the bar and the public should be made in writing and mailed, or emailed, to:

Hon. Brian D. Hill, Judge of the Rush Superior Court, Attn: Public Comment on Local Rules, Rush Superior Court, 101 East 2nd Street, Rushville, IN 46173, or by email to: superiorcourt@rushcounty.in.gov.

A paper copy of the proposed amended local rule(s) will be made available for viewing in the office of the Clerk of Rush County, 101 East 2nd Street, Room 209, Rushville, IN 46173, during normal business hours. Persons with Internet access may view the proposed amended local rules at the following website:
<http://www.courts.IN.gov/rules/local/rush>

**PROPOSED AMENDMENTS – May 2011
FOR THE RUSH CIRCUIT AND SUPERIOR COURT**

TRIAL RULES

Rule LR70 – TR53.5-1

In all cases in which a Motion for Continuance is filed, the Motion must contain the following:

A. ~~The Motion is made with the knowledge and consent of the party in whose name the Motion is being filed.~~

B. ~~A.~~ A statement indicating that all opposing counsel (or parties if pro se) including any Guardian Ad Litem have been contacted and agree or object to the continuance.

All Motions for Continuance must be accompanied by a proposed Order with blanks for resetting the hearing.

PROBATE LAW RULES

Rule LR70 – PR00-1 Bond

In every supervised estate and guardianship, the personal representative or guardian, before entering duties, shall file a bond not less than the value of the annual rents and profits of all property of the estate, except as hereinafter provided:

1. Where, under the terms of the will, the testator expresses an intention that the bond be dispensed with, the Court ~~shall~~ may set a bond adequate to protect creditors and tax authorities.
2. Where the heirs or legatees have filed a written request that the personal representative serve without bond, the bond ~~will~~ may be set in an amount adequate to protect the rights of creditors and tax authorities only.
3. ~~No bond shall be required. In lieu of a bond in any supervised estate, or guardianship in which a corporate fiduciary qualified by law to serve as such is either the personal representative or one of several co-personal representatives or guardians, a personal representative may serve with approval and consent of 2/3 of the heirs.~~
4. In lieu of a bond, fiduciary may restrict transfer of all or part of the estate ~~or~~ guardianship liquid assets ~~by~~ placing those assets in a federally-insured financial institution with the following restriction placed on the fact of the account or document: NO PRINCIPAL OR INTEREST SHALL BE WITHDRAWN WITHOUT WRITTEN ORDER OF THE RUSH CIRCUIT COURT OR SUPERIOR COURT OF RUSHVILLE, INDIANA.

The fiduciary shall file the following with the Court:

- A. Prior to issuance of Letters, the fiduciary's attorney shall execute an Attorney's Undertaking for such assets.
- B. Within ten (10) days of the order authorizing the creation of the account, a certification by an officer of the financial institution at which the account has been created, stating that the account is restricted as required by the Court, shall be filed with the Court.

Rule LR70 – PR00-2 Inventory

In all supervised estates, the personal representative shall file an inventory with the Court within two (2) months of the appointment of the personal representative. In all unsupervised estates, the personal representative shall file within two (2) months of the appointment of the personal representative certification that the inventory has been completed as required by I.C. 29-1-7.5-3.2.

A temporary guardian shall file an inventory with the Court within thirty (30) days of appointment. All other guardians shall file a complete inventory of property with the Court within ninety (90) days of appointment.

Rule LR70 – PR00-3 Fees for Personal Representatives and Attorneys

1. No fees for personal representatives, guardians or attorneys shall be paid out of any supervised estate or guardianship without prior written order of the court.
2. Final fees in supervised estates and guardianships shall not be paid until the court has approved the final account. All orders for final fees shall provide that said fees are to be paid only after approval of the final account. This rule does not preclude payment of partial fees during administration after obtaining written Court order for the same.
3. No petition for fees of personal representatives or attorneys need be filed in unsupervised estates.
4. Petitions for fees must be signed by the personal representative or guardian.
5. Unjustified delays in carrying out duties by the fiduciary and/or attorney ~~will~~ may result in a reduction of fees of the individuals responsible for the delay.

~~Rule LR70 – PR00-4 Unsupervised Administration~~

~~———— No Petition for Administration without Court Supervision will be granted unless the consent requirements of I.C. 29-1-7.5-2(a)(4) are met along with all of the other requirements of I.C. 29-1-7.5-2(a).~~

Rule LR70 – PR00-5 4 Accountings

Whenever a supervised estate cannot be closed within one (1) year, an intermediate account shall be filed with the Court within thirty (30) days after the expiration of the one (1) year and each succeeding year thereafter. Such accounting shall comply with the provisions of I.C. 29-1-6-4 and 29-1-16-6 and:

1. shall state facts showing why the estate cannot be closed;
2. shall proposed partial distribution of the estate to the extent that partial distribution can be made without prejudice to distributees and claimants.

~~All guardianship accountings shall contain a certification of an officer of any financial institution in which guardianship assets are held, verifying the account balance (See attached form: “Certification by Financial Institution”).~~

All Social Security or Medicare benefits received by the fiduciary on behalf of an incapacitated person shall be included and accounted for in the guardianship accountings unless Court approval has been previously granted to allow said funds to be paid directly to a residential or health care facility. A copy of the annual accounting required by The Social Security Administration for a representative payee shall be an adequate accounting if those are the only monies received by the guardian.

~~In all supervised estate and guardianship accountings, vouchers or canceled checks for the expenditures claimed shall be filed with the accounting. No affidavits in lieu of vouchers or canceled checks will be accepted from individual fiduciaries. An affidavit in lieu of vouchers or canceled checks may be accepted from a state or federally chartered financial institution which serves as a fiduciary, provided the financial institution retains the vouchers or canceled checks on file or by electronic recording devices and makes same available to interested parties upon Court order. The institution shall provide a Certification from its Internal Audit Department verifying the accuracy of the accounting.~~

All accountings shall follow the prescribed statutory format. Informal, handwritten or transactional accountings will not be accepted.

Rule LR70 – PR00-6 5 Supplemental Reports

All supplemental reports filed with the Court must be accompanied by receipts for distribution made.

Rule LR70 – PR00-7 6 Adoption

~~Except for good cause shown, no final hearings in adoption proceedings shall take place until the adopting couple (or the birth parent and adopting step parent) have been married for at least one (1) year.~~

A consent to adoption must be notarized.

Rule LR70 – PR00-7 Requirements for Establishing Guardianships

In all guardianships matters seeking to declare an adult incapacitated for any reason, the incapacitated person shall be present at the hearing unless the provisions of I.C. 29-3-5-1(d) are met.

A physician's report by the doctor treating the alleged adult incapacitated person or such additional evidence as the Court shall require, shall be presented to the Court at the time the petition is filed or on the hearing date. No determination will be made without a supporting medical report or testimony.

Rule LR70 – PR00-8 Restricted Accounts in Guardianships or Minors

In guardianships over the estate of a minor, unless otherwise authorized by the Court, funds shall be placed in a restricted account, designating that no principal or interest may be withdrawn without prior written order of the Rush Circuit Court.

Prior to the issuance of letters in a guardianship over a minor's estate or the compromise of a minor's claim, the guardian and attorney shall execute the Lawyer's Undertaking and Obligation and Order to Guardians.

A certification by a financial institution that a properly restricted account has been created shall be filed within ten (10) days of the Order establishing guardianship.

No surety bond or restricted account is required where a corporate fiduciary serves as a guardian or co-guardian of the estate.

Rule LR70 – PR00-9 Address of Fiduciaries

All petition for appointment of personal representatives or guardians shall contain the petitioner's current address. A personal representative or guardian who changes address shall immediately advise the Court of the new address.

Rule LR70 - PR00-10 Fees of Attorney and Fiduciary

1. No Fees for fiduciaries or attorneys shall be paid in any supervised estate or guardianship until the Court has approved a fee petition filed by the attorney for the estate.

2. No attorney or fiduciaries shall be paid in any supervised estate or guardianship until the Court has approved a fee petition filed by the attorney for the estate.

3. Rule 1.5 of the Rule of Professional Conduct has been adopted by the Supreme Court of Indiana to govern attorney fees. All fees charged by attorneys shall be reasonable. the rule further enumerates the factors to be considered, which are as follows:

a. The time and labor required, the novelty and difficulty of questions involved, and the skills requisite to perform the legal service properly;

- b. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyers;
- c. The fee customarily charged in the locality for similar legal services;
- d. The amount involved and the results obtained;
- e. The time limitations imposed by the client or by the circumstances;
- f. The nature and length of the professional relationship with the client;
- g. The experience, reputation and ability of the lawyer or lawyers performing the services;